IN THE HIGH COURT OF JUDICATURE AT BOMBAY

Appellate Side

Writ Petition No.489l of l996

The Ahmednagar Sahakari Bank Ltd..Petitioner
vs
Bombay Agril Produce Market Committee and ors.. ..respondents

Mr. B G Vaidya for petitioner

Mr.Y R Naik for respondents

CORAM: A.P.SHAH & S.C DHARMADHIKARI JJ.

Dated 4.ll.2004

P.C:

Heard advocates.

l. The petitioner is a Cooperative Bank registered under the Mahararshtra Cooperative Societies Act, l960. The first respondent Bombay Agricultural Produce Market Committee Bombay is a body corporate created under the Maharashtra Agricultural Produce Marketing (Regulation) Act, l967. The first respondent published an advertisement in the local news papers on l8.l0.l99l inviting offers for the offices at Agricultural Centre of Fruits and Vegetable Market Complex, Turbhe,Navi Mumbai. The terms and conditions for the fulfilment of the allotment were set out in the booklet published by the first respondent and supplied alongwith the

prescribed Form of Offer. In response to the said advertisement the petitioner offerred to bid for two premises being ‘Bl’ and ‘B2’ respectively having built up area of 5888 sq ft each for the price stated therein for conducting banking business. Alongwith the Forms of Offer, petitioner enclosed Earnest Money Deposit in the form of demand draft of Rs.8,83,200 each made on the same day in favour of the first respondent. By letter dated 28.l.l992 the first respondent informed the petitioner that the petitioner’s tender for allotment of premises Bl on the ground floor in the Agricultural Trade Centre at Vashi New Bombay amounting to Rs.l,50,20,288 was accepted subject to the terms and conditions set out in the said letter.

2. The offer given by the petitioner for premises ‘B2’, did not materialise and the earnest money deposit for the said premises was adjusted against the price of the premises ‘Bl’. The petitioner paid the entire balance amount by cheque on 27.4.l992 and was put in possession of the said premises sometime in April l992.

3. It appears that nearly three years after the

contract was concluded, the first respondent addressed a letter dated 7.2.l995 to the petitioner stating that on the advice of their Architects it is found that the amount payable for the cost of construction was wrongly calculated and the revised cost of construction for the said premises worked out on the basis of built up area comes to Rs.2,l7,49,926. It was further stated that the petitioner was charged on the basis of the area of the premises being 5888 sq ft which was the carpet area and that the petitioner was liable to pay on the basis of the area of the premises being 8526 sq ft being the built up area and that in view of the difference the petitioner's liability to pay the balance of the amount works out to Rs.67,29,538 for the said premises on the basis that the built up area of the premises is 8526 sq ft. The first respondent therefore called upon the petitioner to pay the balance of the cost of the said premises aggregating to Rs.67,29,538 on or before l5.2.l995. The petitioner replied to the said letter through their advocate dated l4.3.l995 contending inter alia that the petitioner had offered to purchase premises 'Bl' for a lumpsum of Rs.l,50,20,288 and the first respondent accepted the offer and thus there was a concluded contract between the parties

and it is not open for the first respondent to make additional demand on the basis of the socalled increase in the area. The petitioner therefore called upon the first respondent to withdraw the demand. The first respondent, however, insisted upon the petitioner to pay the balance of the consideration on or before the extended date 30.9.l996 failing which the petitioner's allotment would stand cancelled and the Market Committee will be free to allot the said premises to any other party. The petitioner has therefore approached this court seeking a declaration that the terms and conditions of the letter of allotment of premises in regard to its price and area are final and concluded and binding upon the respondents and the letter of demand dated l3.8.l996 is liable to be withdrawn and/or rescinded and/or not to be acted upon by the petitioner.

4. The petition is resisted by the respondents by a counter affidavit of their Executive Engineer raising inter alia a preliminary objection to the maintainability of the petition on the ground that there are disputed questions of facts which cannot be gone into in writ jurisdiction or investigated by this court. It was therefore contended that the

petition is not maintainable and the petitioners should be directed to adopt remedy of a civil suit. It was also contended that when the tenders were floated it was assumed that the built up area was 5888 sq ft of premises 'Bl'. However, on verification it was found that the built up area of the said premises is not 5888 sq ft but 8526 sq ft. It was contended that the respondents accepted the offer at the rate of rs.255l for each sq ft. At that rate for the built up area of 8526 sq ft the amount works out to Rs.2,l7,49.826. Since the petitioner has already paid Rs.l,50,20,288 the balance payable by the petitioner works out to Rs.67,27,538.

5. Mr. B G Vaidya, learned counsel appearing for the petitioner contended that though the respondents have raised the point that the petition involves disputed questions of fact has not identified any such disputed questions of fact which disentitled the petitioners from seeking reliefs from this court. Mr Vaidya contended that assuming that some disputed questions did arise for consideration in a writ petition, that itself would not bar this court under Art 226 of the Constitution from examining such questions of fact.

He further submitted that in the present case the terms of the contract between the parties were clear and the only question that arises for consideration is when there was a concluded contract between the parties whether the respondents were right in making additional demand and this question could be decided on the basis of admitted facts of the case. The learned counsel therefore submitted that the contention of the respondents that there are disputed questions of fact is wholly baseless. On merits of the case Mr. Vaidya submitted that the demand made by the respondents for the balance as stated in the letter of 23.8.l995 is dehors the Form of Offer made by the petitioner which form part of the offer. Mr Vaidya submitted that upon acceptance of the offer given by the petitioner in compliance with the conditions of tender there was a concluded contract which was binding upon the respondents. Therefore, according to Mr. Vaidya respondents were not justified in making additional demand for the alleged difference in the area and the impugned action is wholly illegal and arbitrary.

6. Mr.Naik,learned counsel appearing for the respondents submitted that in the facts and

circumstances of the present case writ petition was not maintainable nor it could be construed as appropriate remedy. Mr Naik submitted that the subject matter is a dispute arising out of a contract and is not a matter falling under the purview of administrative law. According to him the doctrine of fairness and reasonableness applies only in the exercise of statutory or administrative actions of a State and not in the exercise of a contractual obligation and issues arising out of contractual matters will have to be decided on the basis of the law of contract and not on the basis of administrative law. Mr Naik submitted that an excess area of 2638 sq ft was given to the petitioner and therefore the petitioner is liable to pay the differential amount as per the demand notice issued by the respondents.

7 In the light of the submissions made at the bar the first question that falls for our consideration is whether the writ petition under Art 226 is maintainable to enforce contractual obligations of the State or its instrumentality. In our opinion this question is no more resintegra and is settled by a number of decisions of the Supreme Court last being the decision in ABL International Ltd and vs

Export Credit Guarantee Corpn of India Ltd, (2004) 3 SCC 553. The Court after an exhaustive consideration of its earlier decisions held that a writ petition involving serious disputed questions of facts which requires consideration of evidence which is not on record, will not normally be entertained by a court in the exercise of its jurisdiction under Art 226 of the Constitution. However, there is no absolute rule that in all cases involving disputed questions of fact the parties should be relegated to civil suit. It was held that in an appropriate case writ court has jurisdiction to entertain the petition involving disputed questions of fact and there is no absolute bar in entertaining the petition even if same arises out of contractual obligations or involves some disputed questions of fact.The Court summarised the legal position as to the maintainability of a writ petition as under:

> "a) In an appropriate case,a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.
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> b) Merely because some disputed questions of

fact arise for consideration,same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

c) A writ petition involving a consequential relief of monetary claim is also maintainable".

8. We may also refer to the celebrated decision in Kum Shrilekha Vidyarthi and ors vs. State of UP, (l99l) l SCC 2l2 where the Court observed as under:

"The requirement of Article l4 should extend even in the sphere of contractual matter for regulating the conduct of the State activity. Applicability of Article l4 to all executive actions of the State being settled and for the same reason its applicability at the threshold to be making of contract in exercise of the executive power being beyond dispute,the State cannot thereafter cast off its personality and exercise unbridled power unfettered by the requirements of Art l4 in the sphere of contractual matters and claim to be governed therein only by private law principles

applicable to private individuals whose rights flow only from the terms of the contract without anything more. The personality of the State,requiring regulation of its conduct in all spheres by requirements of Art l4 does not undergo such a radical change after the making of a contract merely because some contractual rights accrue to the other party in addition. It is not as if the requirements of Art l4 and contractual obligations are alien concepts, which cannot exist. The Constitution does not envisage or permit unfairness or unreasonableness in State actions in any sphere of its activity contrary to the professed ideals in the preamble .Therefore total exclusion of Art l4- non arbitrariness which is basic to rule of law- from State actions in contractual field is not justified. This is more so when the modern trend is also to examine the unreasonableness of a term in such contracts where the bargaining power is unequal so that these are not negotiated contracts but standard form contracts between unequals.

Unlike the private parties the State while exercising its powers and discharging its functions, acts indubitably,as is expected of it,for public good and in public interest. The impact of every State action is also on public interest. It is really the nature of its personality as State which is significant and must characterise all its actions in whatever field, and not the nature of function,contractual or otherwise, which is decisive of the nature of scrutiny permitted for examining the validity of its act. The requirements of Art l4 being the duty to act fairly, justly and reasonably,there is nothing which militates against the concept of requiring the State always to so act, even in contractual matters. This factor alone is sufficient to import at least the minimal requirements of public law obligations and impress with this character the contract made by the State or its instrumentality. It is a different matter that the scope of judicial review in respect of dispute falling within the domain of contractual obligations may be more limited and in doubtful cases the parties

> may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes.However, to the extent, challenge is made on the ground of violation of Art l4 by alleging that the impugned act is arbitrary, unfair and unreasonable,the fact that the dispute also falls within the domain of contractual obligations would not relieve the State of its obligation to comply with the basic requirements of Art l4.To this extent, the obligation is of a public character invariably in every case irrespective of there being any other right or obligation in addition thereto. An additional contractual obligation cannot divest the claimant of the guarantee under Art l4 of non arbitrariness at the and of the State in any of its actions".

9. In the light of this settled legal position we are unable to accept the objection to the maintainability of the petition. In the instant case there is no dispute about the terms and conditions of auction sale. There is also no dispute that the petitioner was the highest bidder

and the said bid was accepted and the sale was confirmed and the petitioner was put in possession of the premises. There is also no dispute that the respondent is an instrumentality of the State for the purpose of Art l2 of the Constitution. Therefore we hold that the writ petition is maintainable in law.

l0. Then coming to the merits of the case it is an admitted position that the tender notice advertised by the respondents for sale of office premises was on lumpsum basis. It is true that a tender notice does not amount to an offer or proposal but merely an invitation to the parties for making an offer. But once the offer is given by the party and his offer is accepted there would be a concluded contract between the parties. Mr.Naik was unable to show any term in the contract which gives right to the respondents to reopen the sale which was confirmed long prior to the date on which the letter reopening the sale was issued. The terms of the contract were very clear. Lumpsum offer was to be given by the petitioners for the office and accordingly offer was made by the petitioners and was accepted by the respondents.Thus there was a concluded contract between the parties. Once the

Form of Offer is accepted by the respondents and contract is concluded it is not open for the respondents to make additional demand on the basis of the report of their Architect or otherwise.

ll. In our opinion, the petitioner had entered into a lumpsum contract taking into consideration various terms which formed part of the prescribed Form of Offer and Information booklet. The acceptance of the said offer by the respodnents in their letter dated 26.l.l992 was unqualified and absolute in relation to the area as well as price and it was nowhere stated that the transaction was subject to verification of the area. In the circumstances it is not open to the respondents to belatedly reopen the entire transaction and call upon the petitioner to pay an additional price.

l2. In the result, in view of the foregoing discussion, rule is made absolute in terms of prayer clauses a(i) and a(ii) with no order as to costs. The petitioners have deposited 50% amount with the respondents and for the rest petitioner has furnished a bank guarantee.The bank guarantee stands discharged. The respondents are directed to refund the 50% amount within eight weeks from today

with simple interest at the rate of 6% p.a. till payment.